IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.22722 of 2007

1. **BAL BHARTI , Wife of Shailendra Mahto**
2. **Sunaina Devi, Wife of Late Chamroo Mahto @ Rajendra Mahto**
Both residents of Village-Hemjapur, Police Station-Dharhara, District Munger.

……Petitioners.

Versus

THE STATE OF BIHAR ……Opposite Party.

For the Petitioners : Mr. Sushil Kumar Singh, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.

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3. 15.10.2008. Heard the learned counsel for the petitioners as also the learned A.P.P. for the State.

The petitioners who though not named in the F.I.R. but whose names cropped up in course of investigation and have been chargesheeted, through this application, have prayed for the quashing of the order dated 13.4.2007 passed in Sessions Case No.511 of 2006 arising out of Dharhara P.S. Case No.142 of 2002, whereby the learned Presiding Judge, Fast Track Court No.IV, Muger, has rejected their petition for their discharge under Sections 227 and 228 Cr.P.C.

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The two principal grounds agitated by the learned counsel for the petitioners in assailing the impugned order is that co-accused Sadanand Mahto and Shailendra Mahto had been acquitted after a full fledged trial of the charges framed under Sections 364-A and 120-B I.P.C. and the petitioners are entitled to similar benefit. The second limb of argument of the learned counsel for the petitioner is that there is no material in the case diary so as to compel the court to frame charge against them.

It is by now well settled by a catena of decisions that

Sections 227 and 228 Cr.P.C. have to be read in juxtaposition with each other and at the stage of framing of charge the standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Sections 227 and 228 Cr.P.C. At this stage, even a very strong suspicion founded upon materials before the Magistrate or the court concerned which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence. Gainful reference may be placed on the decisions of State of Bihar Vs. Ramesh Singh (AIR 1977 SC 2018), Superintendent of Remembrancer of Legal Affairs Vs. Anil Kumar Bhunja (AIR 1980 SC 52). In Niranjan Vs. Jitendra (AIR 1990 SC 1962) the Apex Court has observed that the court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case but there again the ultimate decision lies only on the court concerned.

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From the impugned order of the learned Presiding Judge, it appears that there is specific evidence against these two petitioners in paragraphs 6 and 24 of the case diary. The learned counsel for the petitioners submits that paragraph 24 of the case diary is supervision note which cannot be looked into. I am in full agreement to the submission of the learned counsel for the petitioner that supervision note cannot be looked into either by the court or for the benefit of the

parties but paragraph 6 of the case diary which is the statement of the wife of the informant contains substantial material to show the complicity of the petitioners in the crime.

In view of the categoric decisions of the Supreme Court and there being material in the case diary to show the complicity of the petitioners in the crime, I find no illegality in the impugned order which requires interference by this Court.

So far as the other submission advanced by the learned counsel for the petitioners regarding the acquittal of the two co-accused is concerned, the same is noticed only to be rejected since the benefit which has accrued to acquitted accused cannot be bestowed upon these two petitioners as their case had been bifurcated, presumably on the basis of their absconding from court, and, therefore, the acquittal of the two co-accused could not come to the rescue of the petitioners. Gainful reference for this purpose may be made to the cases of Manoj Kumar Vs. State of Bihar, reported in 2003(3) PLJR 257 and Rama Shankar Tiwary Vs. State of Bihar, reported in 2005(3) PLJR 507.

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In view of what has been discussed above, I find no apparent illegality in the impugned order of the learned Presiding Judge, Fast Track Court No.IV, Munger. Accordingly, this application is dismissed.

(Abhijit Sinha,J)

P.S.